

FEDERAL ELECTION COMMISSION
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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MURs: 4395, 4480, 4669
STAFF MEMBER: Delanie DeWitt Painter

DATES COMPLAINTS FILED:
MUR 4395 -- June 25, 1996
MUR 4480 -- September 25, 1996
MUR 4669 -- October 31, 1996

DATES OF NOTIFICATION:
MUR 4395 -- June 28, 1996
MUR 4480 -- October 2, 1996
MUR 4669 -- November 4, 1996

DATE ACTIVATED: February 10, 1999

EXPIRATION OF STATUTE OF LIMITATIONS:
MUR 4395 -- April 15, 2001
MUR 4480 -- August 1, 2000¹
MUR 4669 -- June 30, 2000²

COMPLAINANTS:

MUR 4395: Goodwin P. Back

¹ This is the earliest date that the statute of limitations would expire for any of the alleged activity in MUR 4480, based on the date of the Primary Committee's agreement to reimburse Richard Morris' travel expenditures, August 1, 1995. Attachment 6. Mr. Morris received reimbursement payments through July 1996 for travel and subsistence expenditures. As of October 15, 1999, the Committee continues to report a disputed debt owed to Mr. Morris in the amount of \$12,165.72 for reimbursements Mr. Morris requested for expenses he incurred from June through August 1996.

² This is the earliest date that the statute of limitations would expire for the alleged activity in MUR 4669 based on the date of the Primary Committee's first reported payment to White House Airlift Operations for travel by government aircraft. Travel by government aircraft continued through August 28, 1996, the date of the nomination, for the Primary Committee and from that date through November 5, 1996, the date of the general election, for the General Committee. Payments for the air travel and reporting of the payments continued as late as 1998.

MUR 4480: Richard A. Delgaudio, President
Legal Affairs Council

MUR 4669: Mark Kleinman
People for Truth

RESPONDENTS:

MUR 4395: Clinton/Gore '96 Primary Committee, Inc.
and Joan Pollitt, as treasurer

MUR 4480: Clinton/Gore '96 Primary Committee, Inc.
and Joan Pollitt, as treasurer

Richard Morris

MUR 4669: Clinton/Gore '96 Primary Committee, Inc.
and Joan Pollitt, as treasurer

Clinton/Gore '96 General Committee, Inc.
and Joan Pollitt, as treasurer

RELEVANT STATUTE(S):

2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 431(11)
2 U.S.C. § 434(a)(1)
2 U.S.C. § 434(b)(2) and (4)
2 U.S.C. § 434(b)(8)
2 U.S.C. § 437g(a)(1)
2 U.S.C. § 441a(b)(1)(A)
2 U.S.C. § 441a(d)
2 U.S.C. § 441a(f)
26 U.S.C. § 9003(b)(2)
26 U.S.C. § 9012
26 U.S.C. § 9032(9)
26 U.S.C. § 9035
26 U.S.C. § 9042(b)
11 C.F.R. § 100.7(a)(1)(iii)
11 C.F.R. § 100.10
11 C.F.R. § 104.11
11 C.F.R. §§ 104.13(a)(1) and (2)
11 C.F.R. § 111.4(b)
11 C.F.R. § 111.4(d)
11 C.F.R. §§ 9004.7(b)(4) and (5)
11 C.F.R. § 9032.9(a)
11 C.F.R. § 9034.4(a)(1)

11 C.F.R. § 9034.7(a)
11 C.F.R. § 9034.7(b)(2)
11 C.F.R. §§ 9034.7(b)(4) and (5)
11 C.F.R. § 9035.1(a)(1)

INTERNAL REPORTS CHECKED: Disclosure Reports, Audit Documents

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This First General Counsel's Report concerns three complaint-generated Matters Under Review ("MUR"s) involving allegations of violations by the Clinton/Gore '96 Primary Committee, Inc. ("Primary Committee") and Joan Pollitt, as treasurer, the Clinton/Gore '96 General Committee, Inc. ("General Committee") and Joan Pollitt, as treasurer and Richard Morris, a campaign consultant, related to activity from the 1996 presidential primary and general election campaigns of President William J. Clinton and Vice President Albert Gore, Jr. These matters involve allegations of violations related to travel expenditures or reimbursements for travel and subsistence expenses, including allegations that: the Primary Committee failed to properly report foreign travel expenses in April 1996 that were allegedly "political," *see* Attachment 1 at 1 (MUR 4395); the Primary Committee illegally spent public funds on a campaign consultant's personal expenses (MUR 4480); and the Primary Committee and General Committee failed to properly report payments for travel by government aircraft (MUR 4669).

While the complaints in these matters were filed in 1996, these matters were held in abeyance pending completion of the audits of the Primary Committee, General Committee and the Clinton/Gore '96 General Election Legal and Accounting Compliance Fund ("GELAC"), and were activated on February 10, 1999. The Commission approved the audit reports on the Primary Committee, General Committee and GELAC on June 3, 1999. The audit reports did not

contain any findings related to the violations alleged in the complaints in these matters because the audits did not reveal any material non-compliance based on the Audit staff's review of the Committees' records, disclosure reports and other documentation.

Based upon the allegations in the three complaints and the responses to the complaints, this Office recommends that the Commission find no reason to believe that the respondents in any of these matters violated any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455 ("FECA"), the Presidential Primary Matching Payment Account Act, as amended, 26 U.S.C. §§ 9031-9042 ("Matching Payment Act"), the Presidential Election Campaign Fund Act, as amended, 26 U.S.C. §§ 9001-9013 (the "Fund Act"), or the Commission's regulations.

II. LAW

A. FILING A COMPLAINT

Any person who believes that a violation of the federal election campaign laws³ has occurred may file a complaint with the Commission. 2 U.S.C. § 437g(a)(1). A complaint shall provide the full name and address of the complainant, and the contents of the complaint shall be sworn to and signed in the presence of a notary public and notarized. 11 C.F.R. § 111.4(b). The complaint should clearly identify as a respondent each person or entity who is alleged to have committed a violation; identify the source of information which gives rise to the complainant's belief in the truth of statements which are not based on the complainant's personal knowledge; contain a clear and concise recitation of the facts which describe a violation; and be accompanied by any documentation supporting the facts alleged if such documentation is known of, or

³ These laws consist of the FECA, the Matching Payment Act and the Fund Act.

available to, the complainant. 11 C.F.R. § 111.4(d). The Office of General Counsel notifies complainants when they do not comply with the factors set forth at 11 C.F.R. § 111.4. On November 15, 1979, the Commission determined to continue to accept complaints based on newspaper articles containing substantive facts. Commission Memorandum 663.

B. CONTRIBUTIONS

A contribution includes any gift, subscription, loan, advance, deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A)(i). "Person" does not include the federal government or any authority of the federal government. 2 U.S.C. § 431(11); 11 C.F.R. § 100.10. "Anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii).

No candidate or political committee shall knowingly accept any contribution that violates the contribution limitations. 2 U.S.C. § 441a(f). Publicly-funded general election candidates are barred from accepting any private contributions, and must sign a written agreement certifying, *inter alia*, that they will not accept any contributions to defray qualified campaign expenses. See 26 U.S.C. § 9003(b)(2).

C. DISCLOSURE

Each treasurer of a political committee shall file reports of its receipts and disbursements with the Commission. 2 U.S.C. § 434(a)(1). Committees must file reports for each reporting period, disclosing all receipts, including all contributions received, and all disbursements, including expenditures. 2 U.S.C. §§ 434(b)(2) and (4). Each in-kind contribution shall be reported as both a contribution and an expenditure. 11 C.F.R. §§ 104.13(a)(1) and (2).

Committees are also required to disclose all outstanding debts and obligations owed by or to the committees.⁴ 2 U.S.C. § 434(b)(8); 11 C.F.R. § 104.11.

D. QUALIFIED CAMPAIGN EXPENSES

A qualified campaign expense of a publicly-financed primary candidate is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, not incurred or paid in violation of state or federal law, that is made in connection with the candidate's campaign for nomination and is incurred from the date an individual becomes a candidate through the last day of his or her eligibility. 26 U.S.C. § 9032(9); 11 C.F.R. § 9032.9(a). All contributions received by a publicly-financed primary candidate from the day he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or restore funds which were used to defray qualified campaign expenses. 11 C.F.R. § 9034.4(a)(1). Indeed, it is unlawful for any person who receives a matching fund payment or a transfer of a portion of a matching fund payment knowingly and willfully to use or authorize the use of matching funds for any purpose other than to defray qualified campaign expenses or to repay loans or restore funds which were used to defray qualified campaign expenses. 26 U.S.C. § 9042(b).

No candidate shall incur qualified campaign expenditures in excess of the applicable expenditure limitations. 26 U.S.C. § 9035; 2 U.S.C. § 441a(b)(1)(A); 11 C.F.R. § 9035.1(a)(1).

⁴ A debt or obligation in excess of \$500 must be reported as of the date the obligation is incurred, if the exact amount of the debt is unknown, an estimated amount should be reported, and the correct amount should be reported when the exact amount is determined. 11 C.F.R. § 104.11. See, e.g., MUR 3664 (Commission found probable cause to believe the Bush-Quayle '92 General Election Committee violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 9004.7 and 104.11(b) by failing to properly report debts related to travel by government conveyance).

E. ALLOCATION OF TRAVEL EXPENDITURES

The Commission's regulations provide that travel related to the campaign of a candidate seeking nomination to the office of President shall be a qualified campaign expense and a reportable expenditure. 11 C.F.R. § 9034.7(a). Section 9034.7(b)(2) provides that for "a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure." 11 C.F.R. § 9034.7(b)(2). "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." *Id.* "Campaign activity includes soliciting, making, or accepting contributions, and expressly advocating the election or defeat of the candidate." *Id.* "Other factors, including the setting, timing and statements or expressions of the purpose of an event and the substance of the remarks or speech made, will also be considered in determining whether a stop is campaign-related." *Id.* The cost of such travel is determined by "calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop through each subsequent campaign-related stop, back to the point of origin." *Id.*

The Commission's regulations provide guidance for the use of government conveyance, including government aircraft, by the presidential re-election campaigns of incumbent presidents and vice presidents. *See* 11 C.F.R. §§ 9004.7(b)(4) and (5); 9034.7(b)(4) and (5). For trips by government conveyance, a copy of the official manifest and a list of all passengers on the trip, along with a designation of which passengers are campaign-related, shall be made available for Commission inspection. 11 C.F.R. §§ 9004.7(b)(4); 9034.7(b)(4). If a candidate or other individual uses a government airplane for campaign travel, the campaign must pay the government the lowest unrestricted nondiscounted first class commercial air fare available at the

time traveled if the travel is to a city served by regular commercial service, or the lowest unrestricted nondiscounted coach fare available if the city is served by regularly scheduled coach but not first class flights, or the commercial charter rate for a plane of sufficient size to accommodate the campaign-related travelers if the destination is not served by regularly scheduled commercial service. 11 C.F.R. §§ 9004.7(b)(5)(i); 9034.7(b)(5)(i). The campaign must also pay for flights to pick up passengers. 11 C.F.R. §§ 9004.7(b)(5)(ii); 9034.7(b)(5)(ii).

III. MUR 4395

A. GENERATION OF THE MATTER

MUR 4395 was generated by a complaint filed by Goodwin P. Back on June 25, 1996.

The complainant alleges that expenses for "political" travel by President Clinton to South Korea, Japan, and Russia in April 1996 should have been reported by the Primary Committee.

Attachment 1 at 1. The Primary Committee responded to the complaint on July 17, 1996.

Attachment 2. The Primary Committee denies the allegations and argues that President Clinton could continue in the performance of his official duties while seeking re-election and that he did not participate in any campaign activity during the course of any international travel in April 1996.

B. FACTUAL AND LEGAL ANALYSIS

The complainant alleges that travel by President Clinton to South Korea, Japan, and Russia in April 1996 was for "political" reasons rather than to accomplish foreign policy objectives, based on the complainant's view of the foreign policy value of the trip and a "rumor . . . that Clinton and Yeltsin had made a deal to help each other with their re-election."

Attachment 1 at 2. The complainant argues that the candidate must demonstrate that the trip was "normal procedure of the Clinton Administration, that Clinton always attended to these matters

in these early stages.” *Id.* at 3. Moreover, the complainant contends that if the campaign made any reference to the trip during the election period, the trip “MUST BE CONSIDERED POLITICAL.” *Id.* (emphasis in original). The complainant contends that the travel expenses for the trip should have been reported by the Primary Committee. *Id.* at 1.

Citing Advisory Opinion (“AO”) 1994-15, the Primary Committee responds that the Commission has long recognized that a candidate may perform duties as “a public officeholder without such activity being found to be campaign related.” Attachment 2 at 1. The Primary Committee contends that “[i]nternational travel by President Clinton is unquestionably associated with the resolution of foreign policy issues and the advancement of this nation’s international interests, a requisite job duty of the President.” *Id.* at 2. The Primary Committee further argues that the Commission has never determined that “any secondary political benefit which the President may derive from international travel is sufficient to transform the official character of the events, in the absence of ‘campaign activity.’” *Id.* Moreover, the Primary Committee contends that the trip was “exclusively official travel” and did not involve any campaign activity as defined by the Commission’s regulations, such as fundraising. *Id.*; see 11 C.F.R. § 9034.7(b)(2). The Primary Committee states that the trip was planned in advance of the election year, was based on the requests of foreign leaders, and included meetings with foreign leaders, dignitaries and citizens, attending state events, and touring various sites. *Id.* at 2-3. Moreover, the Primary Committee contends that President Clinton did not refer to the election in his remarks during the trip or expressly advocate the election or defeat of any candidate. *Id.* at 2.

The Primary Committee submitted an affidavit dated July 16, 1996 from Joan Pollitt, the Primary Committee’s treasurer, in support of its contentions. *Id.* at 4. Ms. Pollitt states that

President Clinton traveled between April 15 and April 21, 1996 to Japan, South Korea and Russia. *Id.* She further states that no Primary Committee fundraisers were held in Japan, South Korea, or Russia during the trip or at any other time, and no contributions to the Primary Committee were solicited or received at events during the trip. *Id.* Finally, she states that President Clinton did not participate in any campaign events between April 15 and April 21, 1996 and no Primary Committee events or other activities occurred on his official trip to Japan, South Korea, and Russia. *Id.*

This Office believes that the allegations in the complaint are without merit. The complaint is not supported by any indication of "campaign activity" as defined by 11 C.F.R. § 9034.7(b)(2) during the trip, and seems to be based on the complainant's opinions of the foreign policy value and underlying motivation of the trip. While an incumbent president undoubtedly derives political benefit from the exercise of his or her official duties in both international and domestic matters, an incumbent may also incur political damage from his or her official actions. Some foreign policy actions may appear to be more political than others, such as public appearances with allied foreign leaders. Nevertheless, the possible political overtones or potential positive or negative political effects of an official international trip do not transform that trip into "campaign activity" that must be treated as a qualified campaign expense and reported under 11 C.F.R. § 9034.7(b)(2).⁵

⁵ See also MUR 1790 (Commission found no reason to believe that Reagan-Bush '84 violated 2 U.S.C. § 434(b)(4) and 11 C.F.R. §§ 9003.1 and 9004.7 where President Reagan's campaign did not pay for the use of government conveyance to travel to a speech before the Veterans of Foreign Wars the day after he was nominated.) Even where an individual candidate or campaign staff member is not a federal officeholder, foreign travel for diplomatic or humanitarian reasons can be provided by government aircraft without reimbursement by the campaign if the travel is not campaign-related. See MUR 1619. In MUR 1619, the Commission found no reason to believe that the Jesse Jackson for President Committee violated 11 C.F.R. § 9034.7(b)(2) where the candidate and Tom Porter, a member of his staff, used government aircraft for part of a trip to Damascus, Syria. Although the complainant alleged that Mr. Porter's transport costs were campaign-related because he was a campaign functionary

There is no evidence that President Clinton's trip to Japan, South Korea and Russia in April 1996 involved any "campaign activity" as defined by 11 C.F.R. § 9034.7(b)(2).

Ms. Pollitt's affidavit states that there were no fundraising or campaign events during the trip. Attachment 2 at 4. The international setting and the foreign policy nature of the events during the trip support the conclusion that the trip did not involve "campaign activity." See 11 C.F.R. § 9034.7(b)(2). It appears that President Clinton conducted official activity related to foreign policy including meeting with foreign leaders and citizens. See Attachment 2 at 4. There is no evidence that President Clinton made or solicited contributions, or made any reference to his election in his remarks or speeches during the trip. See 11 C.F.R. § 9034.7(b)(2). Moreover, there is no evidence in the Primary Committee's disclosure reports that the Primary Committee held any events or solicited or received any contributions in Japan, South Korea or Russia during April 1996.

Since the trip does not appear to have had any "campaign-related" stops as defined by 11 C.F.R. § 9034.7(b)(2), the costs related to the trip were not reportable qualified campaign expenses or in-kind contributions received by the Primary Committee. See 2 U.S.C. §§ 434(b)(2) and (4); 11 C.F.R. §§ 104.13(a)(1) and (2). In any event, the cost of the trip could not have been an in-kind contribution because the federal government is not a "person" under the FECA. 2 U.S.C. §§ 431(8)(A)(i) and (11). Therefore, this Office recommends that the Commission find no reason to believe that any violation occurred in this matter.

who had no diplomatic qualifications, the Commission found no reason to believe that a violation occurred based on evidence provided by the respondents concerning Mr. Porter's diplomatic and humanitarian qualifications and his participation in negotiations for the release of an American prisoner.

IV. MUR 4480

A. GENERATION OF THE MATTER

MUR 4480 was generated by a complaint filed on September 25, 1996 by Richard A. Delgaudio, President of the Legal Affairs Council.⁶ Attachment 3. The complaint alleges that the Primary Committee *illegally spent public funds on the personal expenses* of campaign consultant Richard Morris, including payments for a prostitute, liquor and illegal drugs. *Id.* Mr. Morris responded on October 18, 1996 denying the allegations in the complaint. Attachment 4. The Primary Committee responded on October 22, 1996, and denied the allegations of the complaint. Attachment 5.

B. FACTUAL AND LEGAL ANALYSIS

The complainant alleges that the Primary Committee spent "taxpayer funds illegally for certain 'personal' expenses of Mr. Richard Morris." Attachment 3 at 1. Specifically, the complainant alleges that the Primary Committee reimbursed Mr. Morris for expenses related to "criminal activities, namely engaging in prostitution at the Jefferson Hotel." *Id.* The complainant requests that the Commission investigate "the total amount of taxpayer money spent on sex, liquor and lodging for Mr. Morris and prostitute Sherry Rowlands," the identities of any other prostitutes with whom Mr. Morris was involved, and the use of any public funds to purchase illegal drugs. *Id.* The complainant alleges that \$27,000 of the amounts the Primary Committee reimbursed to Mr. Morris "are directly attributable to activities at the Jefferson Hotel" and that Ms. Rowlands admits that Mr. Morris paid her \$12,000. *Id.*

⁶ Mr. Delgaudio originally filed a complaint by facsimile transmission on September 5, 1996, which was not properly notarized. See 11 C.F.R. § 111.4(b). On September 25, 1996, this Office received a signed, notarized complaint.

In its response to the complaint, the Primary Committee contends that the complaint should be dismissed as legally insufficient and devoid of factual support. Attachment 5. The Primary Committee argues that the complainant makes hypothetical and speculative statements, and fails to make a clear and concise recitation of facts that describe a violation of a statute or regulation over which the Commission has jurisdiction as required by 11 C.F.R. § 111.4(d).

Id. at 1. The Primary Committee contends that the complainant makes vague reference to "news stories" but fails to attach or specifically refer to any news articles. *Id.* at 1-2. Moreover, the Primary Committee argues that the complaint is based on mere suspicions, which are insufficient to form the basis of a valid complaint, and does not indicate a possible violation. *Id.* at 2.

Further, the Primary Committee contends that the complainant's apparent suspicion that the Primary Committee has made non-qualified campaign expenses is unfounded. *Id.* at 2. The Primary Committee states that it has "taken great care," including reviewing invoices and back-up documentation, to ensure that its expenditures are for qualified campaign expenses. *Id.* The Primary Committee states that it had an "arm's length consulting agreement with Dick Morris" through August 1996. *Id.* Moreover, the Primary Committee states that payments to Mr. Morris were for consulting services and for his travel expenses which were properly disclosed in its reports, were supported by documentation, and are subject to Commission audit. *Id.* at 2-3. The Primary Committee argues that there is no evidence or reason to believe that the Primary Committee made expenditures for the purposes alleged by the complainant. *Id.* at 3.

Mr. Morris' response states that he received a daily allowance for hotel bills from the Primary Committee which was less than the amount of the actual hotel bill and thus could not have been used for the purposes the complainant alleges. Attachment 4. The response further states that Mr. Morris also received a meal allowance from the Primary Committee based on the

federal employee per diem rate, as well as reimbursement for his telephone calls, and that after his resignation from the campaign, Mr. Morris advised the Primary Committee of the phone numbers of Ms. Rowlands and other numbers unrelated to his official business, and the Primary Committee was in the process of deducting the cost of telephone calls to those numbers from the final settlement amount due to Mr. Morris. *Id.*

This Office believes that the complaint is sufficient for Commission consideration but that the allegations in the complaint are unfounded. The complaint provides the full name and address of the complainant, was properly sworn and signed in the presence of a notary, identifies the Primary Committee and Mr. Morris as potential respondents, and the complainant appears to believe that a violation of the law has occurred. 2 U.S.C. § 437g(a)(1); 11 C.F.R. § 111.4. While the complaint does not include documentation such as copies of any of the news articles that apparently were the basis for the complainant's allegations and does not specify the statutory or regulatory provision allegedly violated, the facts alleged in the complaint, if true, would constitute a violation of the law. *See, e.g.*, 11 C.F.R. § 9034.4(a)(1); 26 U.S.C. § 9042(b). If the Primary Committee had reimbursed Mr. Morris for expenses that were not in connection with the candidate's campaign for nomination, *see* 26 U.S.C. § 9032(9) and 11 C.F.R. § 9032.9(a), those payments would have constituted non-qualified campaign expenses in violation of 11 C.F.R. § 9034.4(a)(1), and if the payments were knowing and willful, 26 U.S.C. § 9042(b).⁷ Thus, the

⁷ In addition, payments to Mr. Morris for his personal expenses could have constituted a prohibited conversion of campaign funds to personal use. 2 U.S.C. § 439a. "Personal use" of funds includes any use of funds in a candidate's campaign account to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a federal officeholder. 11 C.F.R. § 113.1(g). Personal use expenses include travel expenses for travel involving both campaign and personal activities; the incremental expenses resulting from the personal activities are personal use, unless the person benefiting reimburses the campaign account within 30 days for the amount of the incremental personal expenses. 11 C.F.R. § 113.1(g)(1)(ii)(C).

complaint is sufficient for the Commission to determine whether there is reason to believe a violation occurred.

Nevertheless, the available evidence indicates that the allegations in the complaint are without merit. Documentation of Mr. Morris' travel reimbursement requests and payments, as well as the Primary Committee's consulting agreement with Mr. Morris were made available to the Commission as part of the audit of the Primary Committee pursuant to 26 U.S.C. § 9038. The Primary Committee's consulting agreement with Mr. Morris, dated August 1, 1995, states that Mr. Morris would be entitled to "reimbursement of pre-approved reasonable out-of-pocket expenses." Attachment 6 at 2. To receive reimbursement under the agreement, Mr. Morris' reimbursement claim would have to be pre-approved and supported by "appropriate receipts and other documentation as required by the Federal Election Commission." *Id.* Reasonable expenses under the agreement included, *inter alia*, "standard (not deluxe) rooms at reasonably priced hotels," coach air fare, taxi, auto and train travel, phone calls, and "reasonable meals excluding alcohol and entertainment charges." *Id.* Additional charges, such as movie rentals, health club fees, bar, entertainment and "personal services" were not reimbursable under the agreement. *Id.*

There is no indication that Mr. Morris sought or received reimbursement from the Primary Committee for any of the types of expenditures alleged in the complaint. Mr. Morris' reimbursed expenditures appear to have been qualified campaign expenses because they were not incurred or paid in violation of state or federal law, and were related to consulting services he provided in connection with the candidate's campaign for nomination while the candidate was eligible for public funds. *See* 26 U.S.C. § 9032(9); 11 C.F.R. § 9032.9(a). The available documentation of Mr. Morris' reimbursement requests reveals that he submitted requests only for

the kinds of expenses permitted under the consulting agreement, not for illegal activities or personal expenses unrelated to his consulting services for the campaign.

Moreover, the Primary Committee reviewed and disallowed some of the reimbursement amounts sought by Mr. Morris.⁸ Indeed, the Primary Committee informed the Commission that Mr. Morris' travel expenses for the months of June through August 1996 were in dispute and had not been paid. It appears that a substantial amount of Mr. Morris' travel reimbursement requests remain in dispute and have not been paid: the Primary Committee's most recent disclosure report, the October Quarterly Report filed on October 15, 1999, listed a disputed amount due to Mr. Morris of \$12,165.72.

Therefore, this Office recommends that the Commission find no reason to believe that any violations occurred in this matter.

V. MUR 4669

A. GENERATION OF THE MATTER

MUR 4669 was generated by a complaint filed by Mark Kleinman, of People for Truth, on October 31, 1996.⁹ Attachment 7. The complainant alleges that the General Committee's disclosure reports fail to disclose any payment of expenditures to the government for the candidate's use of Air Force One "for political purposes" and that the candidate received the

⁸ Mr. Morris' response states that he advised the Primary Committee of phone numbers unrelated to his campaign work, and the Primary Committee deducted the cost of telephone calls to those numbers from the reimbursement amount due to Mr. Morris. Attachment 4 at 1.

⁹ The complaint alleged a variety of violations by several respondents including the Democratic National Committee, Dole for President, Inc., the "Clinton-Gore General Campaign," and Administration officials. On August 21, 1997, the Commission divided the case into three separate matters, including MUR 4669, which relates to the allegations against the "Clinton-Gore General Campaign" and Administration officials. The Commission retained the original number, MUR 4558, for the complainant's allegations that the Democratic National Committee violated contribution and disclosure provisions, and severed the allegations concerning media travel reimbursements received by Dole for President, Inc. and placed them under the number MUR 4670.

value of travel on Air Force One as a contribution in violation of 26 U.S.C. § 9012.¹⁰ *Id.* at 2.

The Primary Committee and General Committee filed a joint response to the complaint denying the allegations on December 17, 1996.¹¹ Attachment 8.

B. FACTUAL AND LEGAL ANALYSIS

The complainant alleges that the General Committee's disclosure reports fail to disclose any payment of expenditures to the United States for the candidate's use of Air Force One "for political purposes." Attachment 7 at 2. The complainant alleges that the candidate received the value of travel on Air Force One as a contribution in violation of 26 U.S.C. § 9012. *Id.* The complainant also states that "further investigation may determine official misuse of government property which may require referral to the Department of Justice." *Id.*¹²

¹⁰ The complainant cites the statutory provision for knowing and willful criminal violations related to excess expenditures, receipt of contributions, unlawful use of payments, false statements, etc., 26 U.S.C. § 9012.

¹¹ The complaint in MUR 4669 names the "Clinton-Gore General Campaign." Attachment 7 at 2. However, the notification letter, sent to counsel for both the Primary and General Committees, identifies the Primary Committee as the respondent. Since the allegations in the complaint could involve both the Primary and General Committees, this report treats both Committees as respondents in MUR 4669.

¹² In addition to these allegations, the complainant refers to Pre-MUR 328 and to media reports of misuse of government property by "numerous individuals including Secretary Brown and possibly Secretary O'Leary." Attachment 7 at 2. The allegations involving Secretary Brown and Secretary O'Leary are unclear; however, general allegations of misuse of government property do not constitute a recitation of factual allegations which describe violations of a statute or regulation over which the Commission has jurisdiction. See 11 C.F.R. § 111.4(d)(3). With respect to Pre-MUR 328, the complainant states: "Pre-Mur [sic] 328 regarding the use of government property for political purposes may warrant a further review by the Commission to determine further action. Pre-Mur [sic] 328 involved allegations by the overseers of the Department of Interior filed with the Commission." *Id.* Pre-MUR 328 was generated by a *sua sponte* submission from Edward B. Cohen, Deputy Solicitor of the Department of the Interior ("Interior"), in which he informed the Commission that Interior's billing procedures for "mixed trips," where travel of departmental appointees is both official and political, failed in 1993, 1994 and 1995. Interior uses a formula to allocate expenses between the government and a political organization when its appointees engage in "mixed trips." While the allocation calculations were done, neither bills nor refunds were sent to political organizations for 21 out of 31 "mixed trips," including 16 trips with bills due from political organizations totaling \$5,101.80, as well as trips with refunds due to political organizations. Remedial action was taken, and Interior collected all but \$200 of the outstanding costs and made all but \$85 of the outstanding refunds due to committees. Pre-MUR 328 closed on September 30, 1996, and this Office does not believe this matter warrants further review by the Commission.

The response filed by the Primary Committee and the General Committee (the "Committees") states that the allegations are erroneous and have no merit. Attachment 8. The Committees contend that they have paid over \$1,000,000 for the use of Air Force One and Air Force Two and that their disclosure reports disclose "multiple payments to White House Airlift Operations" totaling \$1,101,718.38 as of December 17, 1996 for the use of Air Force One. *Id.* at 1. The Committees explain that White House Airlift Operations prepares the invoices for the campaign's use of government conveyances, and that the Committees have received, processed and paid invoices for the use of Air Force One and Air Force Two. *Id.* at 2. The Committees attached a spreadsheet to their response detailing payments to White House Airlift Operations totaling \$728,245.66, *id.* at 4-12, and state that an additional \$373,472.72 was paid and disclosed in November 1996 by the Democratic National Committee as an expenditure pursuant to 2 U.S.C. § 441a(d). *Id.* at 2. The Committees also attached a page from the Democratic National Committee disclosure report listing the payment. *Id.* at 13. Finally, the Committees note that as of the time of their response, White House Airlift Operations was continuing to process invoices for government travel and additional payments would be made and disclosed by the Committees. *Id.*

Recognizing that incumbent presidential and vice presidential candidates will use government aircraft for both official duties and campaign travel, the Commission has provided regulations on how campaigns should pay for travel on government aircraft and other government conveyance. See 11 C.F.R. §§ 9004.7(b)(4) and (5); 9034.7(b)(4) and (5). Contrary to the complainant's allegations, the Committees' response details payments for use of government aircraft by the Committees and the Democratic National Committee. Attachment 8. Moreover, as part of the Commission's audits of the Committees pursuant to 26 U.S.C. §§ 9007

and 9038, the Audit staff reviewed the Committees' payments for government conveyance and disclosure of expenditures. The auditors' review did not discover any material problems with the Committees' payments for campaign travel on government conveyance, or with the Committees' disclosure of its payments for government travel. In addition, it is not clear why the complainant cited 26 U.S.C. § 9012, since the activity alleged does not appear to be knowing and willful.

Thus, it does not appear that the Committees failed to pay White House Airlift Operations for campaign travel on government aircraft, or that the Committees failed to properly disclose their travel expenditures. *See* 2 U.S.C. §§ 434(b); 441a(f). Since use of government aircraft is permitted by the regulations, there does not appear to be any misuse of government property. Moreover, the federal government is not a "person" under the FECA, and thus, could not have made a contribution to the Committees even if the Committees had failed to pay a sufficient amount for the campaign travel on government aircraft. 2 U.S.C. §§ 431(8)(A)(i) and (11). Therefore, the Office of General Counsel recommends that the Commission find no reason to believe that any violation occurred in this matter.

VI. RECOMMENDATIONS

MUR 4395

1. Find no reason to believe that the Clinton/Gore '96 Primary Committee, Inc. and Joan Pollitt, as treasurer violated any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455 or the Presidential Primary Matching Payment Account Act, as amended, 26 U.S.C. §§ 9031-9042 with respect to the allegations in the complaint filed by Goodwin P. Back in MUR 4395;
2. Approve the appropriate letters;
3. Close the file in MUR 4395;

MUR 4480

4. Find no reason to believe that the Clinton/Gore '96 Primary Committee, Inc. and Joan Pollitt, as treasurer violated any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455 or the Presidential Primary Matching

Payment Account Act, as amended, 26 U.S.C. §§ 9031-9042 with respect to the allegations in the complaint filed by Richard A. Delgaudio in MUR 4480;

5. Find no reason to believe that Richard Morris violated any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455 or the Presidential Primary Matching Payment Account Act, as amended, 26 U.S.C. §§ 9031-9042 with respect to the allegations in the complaint filed by Richard A. Delgaudio in MUR 4480;
 6. Approve the appropriate letters;
 7. Close the file in MUR 4480;
- MUR 4669
8. Find no reason to believe that the Clinton/Gore '96 Primary Committee, Inc. and Joan Pollitt, as treasurer violated any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455 or the Presidential Primary Matching Payment Account Act, as amended, 26 U.S.C. §§ 9031-9042 with respect to the allegations in the complaint filed by Mark Kleinman in MUR 4669;
 9. Find no reason to believe that the Clinton/Gore '96 General Committee, Inc. and Joan Pollitt, as treasurer violated any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455 or the Presidential Election Campaign Fund Act, as amended, 26 U.S.C. §§ 9001-9013 with respect to the allegations in the complaint filed by Mark Kleinman in MUR 4669;
 10. Approve the appropriate letters; and
 11. Close the file in MUR 4669.

11/3/99
Date

Lawrence M. Noble
Lawrence M. Noble
General Counsel *by KRL*

Attachments:

1. Complaint filed by Goodwin P. Back on June 25, 1996.
2. Response from Lyn Utrecht and Eric Kleinfeld dated July 17, 1996.
3. Complaint filed by Richard Delgaudio on September 25, 1996.
4. Facsimile transmission from Jerry McDevitt dated October 18, 1996.
5. Response from Lyn Utrecht and Eric Kleinfeld dated October 22, 1996.
6. Consulting agreement between Clinton/Gore '96 Primary Committee, Inc. and Richard Morris, dated August 1, 1995.
7. Complaint dated October 31, 1996 from Mark Kleinman, of People for Truth.

8. Response from Lyn Utrecht and Eric Kleinfeld dated December 17, 1996.